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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,090	08/22/2003	William E. Kugler	1164-16-CIP-1	9600
22442	7590	04/05/2006	EXAMINER	
SHERIDAN ROSS PC 1560 BROADWAY SUITE 1200 DENVER, CO 80202			A, PHI DIEU TRAN	
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/646,090	KUGLER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Phi D. A	3637	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 January 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 21-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/16/05;1/25/06</u> . | 6) <input type="checkbox"/> Other: _____  |

***Election/Restrictions***

1. Claims 21-25 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention of group II, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 1/19/06.
2. Applicant's election with traverse of group I to claims 1-20 in the reply filed on 1-/19/06 is acknowledged. The traversal is on the ground(s) that it would not be burdensome to perform the search for both groups as the search would necessary overlap. This is not found persuasive because searching both inventions would be burdensome to be examiner as the method claims contain steps not required of the article claims; also, the extra steps would require extra searches from that of the article claims. Applicant's arguments to the specie election, is persuasive, and the restriction to the species is hereby withdrawn.

The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-5, 8-10, 13-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Buzon (6332292).

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Buzon (figures 18-24) shows an apparatus for selectively adjusting the elevation of a building material comprising an open-ended, substantially cylindrical base (figure 18, the part of 301) having an upper end, a lower end, an exterior surface, an interior surface, a footing member (314) interconnected to a lower end of the base, the footing member having a greater diameter than the base, a first plurality of circumferentially oriented ribs integrally interconnected to the interior surface of the base (the ribs on the inside of part 301, figure 18) and positioned between the upper and the lower end, an internal diameter of the base is selectively reduced in predetermined locations, a substantially cylindrical shaped support member (figure 18, the part which is connected to part 12) having an upper end, a lower end, an exterior surface, an interior surface, a second plurality of circumferentially oriented ribs integrally interconnected to the outer surface of the cylindrical shaped support member, the upper end of the open ended cylindrical base is adapted to receive the lower end of the support member when the first and the second plurality of circumferentially oriented ribs are offset, the support member is rotated with respect to the substantially cylindrical base, the first and second plurality of ribs operably engage to substantially prevent vertical movement, a head portion (12) interconnected to the upper end of the cylindrical support member, the head portion having a geometric profile adapted for engagement with the building material to provide operable support, a third plurality of circumferentially oriented ribs integrally interconnected to the interior of the substantially cylindrical base, and offset from the first plurality of circumferentially oriented ribs, a fourth plurality of circumferentially oriented ribs integrally interconnected to an outer surface of the cylindrical support member, and operably sized to engage the third plurality of circumferentially oriented ribs, a centerline of the first and third plurality of circumferentially oriented ribs being

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offset approximately 180 degrees (the orientation of the center line is not yet clear, thus the figure shows the claimed limitation), a centerline of the second and fourth plurality of ribs being offset approximately 180 degrees, the base, the footing member, the support member and the head portion being comprised of at least one of a plastic, a metal, the head portion comprising at least one upwardly projecting lip, the footing member is integrally interconnected to the lower end of the base, the open end substantially cylindrical base is at least partially closed, the plurality of non-threaded ribs extend outwardly in a substantially perpendicular plane with respect to the longitudinal axis of the shaped base, the base having a threaded upper end, the first plurality of non-threaded circumferentially oriented ribs having a length of **at least** about one quarter of the shaped base.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buzon (6332292) in view of Thorpe (3222030).

Buzon shows all the claimed limitations except for the head portion having a plurality of threads on a lower end, the head portion may be selectively removed from the cylindrical shaped support.

Thorpe shows a head portion (5, 19) having a plurality of threads on a lower end to attach to the upper end of the cylindrical support member, wherein a total length of the apparatus may

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be selectively adjusted, the head portion may be selectively removed from the cylindrical shaped support (7).

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Buzon's structure to show the head portion having a plurality of threads on a lower end, the head portion may be selectively removed from the cylindrical shaped support because it would enable the easy adjustment and mounting of the head from the cylindrical shaped support as taught by Thorpe.

7. Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buzon (6332292) in view of Oyama et al(5398466).

Buzon shows all the claimed limitations except for a locking means in operable engagement with the cylindrical base and the support member, rotation of the support member is substantially prevented with respect to the base, the locking means being a pin, a screw.

Oyama et al shows a locking means (13) locking parts in positions, the locking means being a pin, a screw.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Buzon's structure to show a locking means in operable engagement with the cylindrical base and the support member, rotation of the support member is substantially prevented with respect to the base, the locking means being a pin, a screw because it would enable the easy locking in place of adjustable parts as taught by Oyama et al; furthermore, it is considered well known to one having ordinary skill in the art to show a locking means being a pin or screw to fixedly locking the adjustable parts together.

***Double Patenting***



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8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 1-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 of copending Application No.

10/831514. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the co-pending application are rejectable by claims 1-20

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows different adjustable pedestals.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 571-272-6864. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Phi Dieu Tran A

4/1/06